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XII. Operation and Effect

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Deeds 43, 65, 108

A.L.R. Library

A.L.R. Index, Deeds and Conveyances
A.L.R. Index, Quitclaim Deeds
West's A.L.R. Digest, Deeds 43, 65, 108

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XII. Operation and Effect

A. In General

§ 271. Time as of which deed becomes operative

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 108

Forms

Am. Jur. Pleading and Practice Forms, Deeds § 15 (Instruction to jury—Date of delivery prevails over date of deed)

A deed is consummated by its delivery by the grantor and its acceptance by the grantee[1] and becomes operative from that time,[2] not from the date it bears.[3] Unless required by recording acts, an interest in real property is legally and effectively transferred by the delivery of a deed or other document of conveyance even if the document is not recorded.[4] Deeds generally are construed to vest an interest as speedily as terms will allow.[5]

When two or more deeds are made simultaneously and are so connected with each other that they may be regarded as a single transaction, they are deemed to take effect in such order as will carry out the intentions and secure the rights of the respective parties.[6]

Footnotes

1 §§ 103, 149.

2 McDermott v. U.S., 760 F.2d 879 (8th Cir. 1985) (applying Arkansas law); Heydt v. U.S., 38 Fed. Cl. 286 (1997) (applying Oklahoma law); In re Cook County Treasurer, 185 Ill. 2d 428, 235 Ill. Dec. 910, 706 N.E.2d 465 (1998); Barrett v. Hinds County, 545 So. 2d 734 (Miss. 1989); In re Hume's Estate, 128 Mont. 223, 272 P.2d 999 (1954); City of Omaha v. Morello, 257 Neb. 869, 602 N.W.2d 1 (1999); Williams v. North Carolina State Bd. of Ed., 284 N.C. 588, 201 S.E.2d 889 (1974); Bolyea v. First Presbyterian Church of Wilton, 196 N.W.2d 149, 55 A.L.R.3d 1304 (N.D.

1972); May v. Archer, 1956 OK 144, 302 P.2d 768 (Okla. 1956); Abercrombie v. Hayden Corp., 320 Or. 279, 883 P.2d 845 (1994); Jones v. Wolfe, 203 W. Va. 613, 509 S.E.2d 894 (1998).
A deed conveying property to an incipient "corporation" that has not yet been incorporated passes title to the corporation as of the time of incorporation. Community Credit Union Services, Inc. v. Federal Exp. Services Corp., 534 A.2d 331 (D.C. 1987).

[3] City of Auburn v. Mandarelli, 320 A.2d 22 (Me. 1974).

[4] City of Omaha v. Morello, 257 Neb. 869, 602 N.W.2d 1 (1999).

[5] Temple-Inland Forest Products Corp. v. U.S., 988 F.2d 1418 (5th Cir. 1993) (applying Texas law).

[6] Crabtree v. Crabtree, 136 Iowa 430, 113 N.W. 923 (1907); Motion Picture Advertising Co. v. Capelle, 18 La. App. 642, 137 So. 877 (Orleans 1931); Terrell v. Graham, 576 S.W.2d 610 (Tex. 1979).

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XII. Operation and Effect

A. In General

§ 272. Relation back of acceptance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 65

Acceptance relates back to the time when the grantor intended that the deed be delivered.[1]

The fiction that acceptance by the grantee relates back to the time when the deed was constructively delivered has no application as against strangers, who are permitted to prove the time of acceptance in fact in order to show that the deed does not operate to deprive them of rights, whether they arise because of legal process by a creditor of the grantor or because such strangers are grantees of a deed delivered and accepted in the intermission between delivery and acceptance of the competing deed.[2]

Footnotes

1 Emmons v. Harding, 162 Ind. 154, 70 N.E. 142 (1904); Slagle v. Callaway, 333 Mo. 1055, 64 S.W.2d 923, 90 A.L.R. 1366 (1933); Bingham v. Weber, 197 Or. 501, 254 P.2d 219 (1953).

2 Ames v. Ames, 80 Ark. 8, 96 S.W. 144 (1906); Emmons v. Harding, 162 Ind. 154, 70 N.E. 142 (1904); Wilson v. Woolverton, 137 Kan. 663, 21 P.2d 313 (1933); Lynch v. Johnson, 171 N.C. 611, 89 S.E. 61 (1916).

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XII. Operation and Effect

A. In General

§ 273. Deed of confirmation or correction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 43

A deed of confirmation may be appropriately utilized in order to remove doubts as to the operativeness of a prior deed to convey title to the land intended.[1] A mistake in the description of the land conveyed may be corrected by a subsequent deed executed by the same grantor for the purpose of correcting the description and confirming in the grantee the title to the land intended to have been described in the prior deed, and the two deeds, taken together, will operate to pass the title to the grantee named therein.[2] The correction deed need not restate all material portions of the deed being corrected if such portions contain no errors.[3] Under some circumstances, however, the grantor may intend the second deed to vacate, supersede, and replace the earlier deed,[4] and acceptance of such second deed by the grantee constitutes an election to take the land comprised in the correcting deed and to relinquish title to the land conveyed by the earlier deed.[5]

Where the name of one of the grantees is omitted, the omission may be cured by a subsequent deed incorporating the names of all the grantees in accordance with the intention of the parties.[6]

CUMULATIVE SUPPLEMENT

Cases:

As a general proposition, a correction deed may negate a prior conveyance. Amethyst Land Co., Inc. v. Terhune, 2014-NMSC-015, 326 P.3d 12 (N.M. 2014).

[END OF SUPPLEMENT]

Footnotes

1 Hall v. Wright, 137 Ky. 39, 138 Ky. 71, 127 S.W. 516 (1910); Fertitta v. Bay Shore Development Corp., 252 Md. 393, 250 A.2d 69 (1969).

2 Golden v. Hayes, 277 So. 2d 816 (Fla. 1st DCA 1973); Fertitta v. Bay Shore Development Corp., 252 Md. 393, 250 A.2d 69 (1969); Parker v. McKinnon, 353 S.W.2d 954 (Tex. Civ. App. Amarillo 1962), writ refused n.r.e., (May 16, 1972).

3 Golden v. Hayes, 277 So. 2d 816 (Fla. 1st DCA 1973).

4 Hall v. Wright, 137 Ky. 39, 138 Ky. 71, 127 S.W. 516 (1910) (first deed conveying 2,000 acres and later deed conveying only 1,500 acres); Cox v. Tanner, 229 S.C. 568, 93 S.E.2d 905 (1956) (first deed to husband alone and second deed to husband and wife).

5 Fertitta v. Bay Shore Development Corp., 252 Md. 393, 250 A.2d 69 (1969); Borgeson v. Tubb, 54 Mont. 557, 172 P. 326 (1918).

6 Cox v. Tanner, 229 S.C. 568, 93 S.E.2d 905 (1956).

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XII. Operation and Effect

B. Passing of Grantor's Present Title

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Deeds 120, 121

A.L.R. Library

A.L.R. Index, Deeds and Conveyances
A.L.R. Index, Quitclaim Deeds
West's A.L.R. Digest, Deeds 120, 121

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XII. Operation and Effect

B. Passing of Grantor's Present Title

§ 274. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 120

A complete and delivered deed has the effect of transferring the grantor's title, or so much thereof as the deed purports to convey, to the grantee, and of divesting the grantor thereof.[1] Every conveyance of real estate passes all the interests of the grantor in the property unless a contrary intent can be reasonably inferred from the terms used.[2] If the terms of the granting clause of the deed are sufficiently comprehensive to convey any title the grantor may have in the premises which are the subject of the deed, the instrument will operate as a conveyance of all the grantor's right and title although the grantor's right or title is particularly described as being something less than that which the grantor actually owned.[3]

CUMULATIVE SUPPLEMENT

Cases:

Principal's conveyance of deed to real property to his limited liability company (LLC) effectively conveyed a 50% interest in the property to LLC, since principal had 50% interest in the property at time he executed deed that purported to convey full title of the property to LLC. Bayview Loan Servicing, LLC v. White, 134 A.D.3d 755, 24 N.Y.S.3d 310 (2d Dep't 2015).

[END OF SUPPLEMENT]

Footnotes

1 McDermott v. U.S., 760 F.2d 879 (8th Cir. 1985) (applying Arkansas law).

[2] Davies v. Radford, 433 N.W.2d 704 (Iowa 1988); State, Dept. of Roads v. Union Pacific R. Co., 241 Neb. 675, 242 Neb. 97, 490 N.W.2d 461 (1992), opinion modified, (Dec. 24, 1992); Meadows v. Belknap, 199 W. Va. 243, 483 S.E.2d 826 (1997).

[3] Tucker v. Cole, 148 Fla. 214, 3 So. 2d 875 (1941).

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XII. Operation and Effect

B. Passing of Grantor's Present Title

§ 275. Attempted conveyance of larger estate than grantor has

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 120

A valid deed properly executed and delivered is operative to convey such estate as the grantor has notwithstanding it purports to convey a larger estate.[1] The fact that more real estate is described in a deed than is owned by the grantor will not destroy its operative effect as to the described land actually owned.[2] No deed can operate so as to convey an interest which the grantor does not have in the land described in the deed[3] or so as to convey a greater estate or interest than the grantor has.[4]

Footnotes

1 Leslie v. Harrison Nat. Bank, 97 Kan. 22, 154 P. 209 (1916); Green v. Gustafson, 482 N.W.2d 842 (N.D. 1992); Boys v. Long, 1954 OK 96, 268 P.2d 890 (Okla. 1954).

2 Miller v. Miller, 110 Ind. App. 191, 38 N.E.2d 343 (1942).

3 Armour v. Peek, 271 Ga. 202, 517 S.E.2d 527 (1999); Bernardy v. Colonial & U.S. Mortg. Co., 17 S.D. 637, 98 N.W. 166 (1904).

4 Crum v. Craig, 2010 Ark. App. 531, 379 S.W.3d 71 (2010); Interchange Drive, LLC v. Nusloch, 311 Ga. App. 552, 716 S.E.2d 603 (2011), cert. denied, (Jan. 23, 2012); Lovett v. Stone, 239 N.C. 206, 79 S.E.2d 479, 60 A.L.R.2d 780 (1954); May v. Buck, 375 S.W.3d 568 (Tex. App. Dallas 2012).

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B. Passing of Grantor's Present Title

§ 276. Quitclaim deeds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 121

A quitclaim is used where the grantor intends to convey only such interest as he or she has as opposed to a grant of the fee or other estate with warranty of title.[1] Such a deed is as effectual to convey whatever interest the grantor has in the subject of the deed as any other form of conveyance.[2] It conveys whatever interest the grantor has and nothing more.[3] It does not, however, import that the grantor has any interest at all.[4]

The grantor by a quitclaim deed makes no representation, covenant, or warranty of title and has no duty or obligation to protect the conveyance against any prior conveyance to others in the chain of title.[5]

CUMULATIVE SUPPLEMENT

Cases:

Quitclaim deed to house, which was signed by grantor and transferred title to grantee, but which was not notarized or recorded, was unambiguous, and thus deed did not constitute persuasive evidence that grantor intended to convey title to house to grantee's father; deed unambiguously identified grantor, grantee, the house, the consideration, and the date, but did not mention grantee's father, claim by grantee's father that deed allegedly used grantee's name as a pseudonym for grantee's father was not evident from the deed, and there was no evidence of mutual mistake by grantor or grantee's father in drafting deed. Alaska St. §§ 09.25.010(b), 34.15.010, 34.15.040. Dixon v. Dixon, 407 P.3d 453 (Alaska 2017).

[END OF SUPPLEMENT]

Footnotes

[1] Spreckels v. Brown, 212 U.S. 208, 29 S. Ct. 256, 53 L. Ed. 476 (1909); Patterson v. Buffalo Nat. River, 76 F.3d 221 (8th Cir. 1996) (applying Arkansas law); Alabama Home Mortg. Co., Inc. v. Harris, 582 So. 2d 1080 (Ala. 1991); City of Manhattan Beach v. Superior Court, 13 Cal. 4th 232, 52 Cal. Rptr. 2d 82, 914 P.2d 160 (1996); Layne v. Layne, 74 So. 3d 161 (Fla. 1st DCA 2011); Lindy Lu LLC v. Illinois Cent. R. Co., 2013 IL App (3d) 120,337 (Ill. App. 3d Dist. 2013); Carkuff v. Balmer, 2011 ND 60, 795 N.W.2d 303 (N.D. 2011); May v. Archer, 1956 OK 144, 302 P.2d 768 (Okla. 1956); Black v. Washington Mut. Bank, 318 S.W.3d 414 (Tex. App. Houston 1st Dist. 2010), review dismissed w.o.j., (Jan. 14, 2011); Town of Wolcott v. Behrend, 147 Vt. 453, 519 A.2d 1156 (1986); Erickson v. Chase, 156 Wash. App. 151, 231 P.3d 1261 (Div. 2 2010), review denied, 170 Wash. 2d 1018, 245 P.3d 772 (2011).

[2] Spreckels v. Brown, 212 U.S. 208, 29 S. Ct. 256, 53 L. Ed. 476 (1909); Opaline King Hill v. Gilliam, 284 Ark. 383, 682 S.W.2d 737 (1985); Morris v. Goldthorp, 390 Ill. 186, 60 N.E.2d 857 (1945); Mack v. Tredway, 244 Iowa 240, 56 N.W.2d 678 (1953); May v. Archer, 1956 OK 144, 302 P.2d 768 (Okla. 1956); Sisters & Brothers Inv. Group. v. Vermont Nat. Bank, 172 Vt. 539, 773 A.2d 264 (2001).

[3] Bradford v. Brady, 85 So. 3d 399 (Ala. Civ. App. 2011), cert. denied, (Dec. 9, 2011); SWC Baseline & Crismon Investors, L.L.C. v. Augusta Ranch Ltd. Partnership, 228 Ariz. 271, 265 P.3d 1070 (Ct. App. Div. 1 2011), review denied, (Apr. 24, 2012); Citibank, N.A. v. Lindland, 131 Conn. App. 653, 27 A.3d 423 (2011), certification granted, 303 Conn. 906, 31 A.3d 1180 (2011).

[4] R & R Land Development, L.L.C. v. American Freightways, Inc., 389 S.W.3d 234 (Mo. Ct. App. S.D. 2012), reh'g and/or transfer denied, (Jan. 7, 2013) and transfer denied, (Mar. 19, 2013).

[5] Rosenbaum v. McCaskey, 386 So. 2d 387 (Miss. 1980).

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B. Passing of Grantor's Present Title

§ 277. Quitclaim deeds—What interest passes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 121

To determine what interest passes by a quitclaim deed, a grantee, or any interested person, must look to the chain of title prior to the deed to determine what interest the grantor had to convey and subtract therefrom any express reservation in the quitclaim deed[1] because courts agree that a quitclaim deed, unless a contrary intent appears, passes all the right, title, and interest which the grantor has at the time of making the deed, which is capable of being transferred by deed.[2] A grantee who contracts for a conveyance by quitclaim deed is on notice that he or she cannot expect a conveyance assuring a fee simple title.[3] A purchaser who has only a quitclaim deed to land cannot claim protection as a bona fide purchaser without notice.[4]

Under a conveyance by a quitclaim deed, the grantee can acquire no better interest than the grantor had.[5] If the grantor had a smaller interest than the deed purports to convey, the grantee may not complain.[6] If the grantor has no title or interest to the property conveyed, then the grantee takes nothing under a quitclaim deed,[7] and the instrument is regarded as merely a release or formal disclaimer by the grantor notwithstanding the use of additional words of grant.[8]

A quitclaim deed will convey the fee simple in the realty if the grantor has such an estate.[9]

CUMULATIVE SUPPLEMENT

Cases:

Vendors breached option contract for purchase of real estate by failing to cure title issues and then unilaterally terminating contract with purchaser; contract was valid and binding, and quitclaim deed from third party was inadequate to cure title issues. Maness v. K & A Enterprises of Mississippi, LLC, 250 So. 3d 402 (Miss. 2018).

[END OF SUPPLEMENT]

Footnotes

[1] Rosenbaum v. McCaskey, 386 So. 2d 387 (Miss. 1980).

[2] Spreckels v. Brown, 212 U.S. 208, 29 S. Ct. 256, 53 L. Ed. 476 (1909); Meacham v. Halley, 103 F.2d 967 (C.C.A. 5th Cir. 1939); Patterson v. Buffalo Nat. River, 76 F.3d 221 (8th Cir. 1996) (applying Arkansas law); Bateman v. Donovan, 131 F.2d 759 (C.C.A. 9th Cir. 1942) (applying Montana law); Industrial Partners, Ltd. v. CSX Transp., Inc., 974 F.2d 153 (11th Cir. 1992) (applying Alabama law); Alabama Home Mortg. Co., Inc. v. Harris, 582 So. 2d 1080 (Ala. 1991); City of Manhattan Beach v. Superior Court, 13 Cal. 4th 232, 52 Cal. Rptr. 2d 82, 914 P.2d 160 (1996); Citibank, N.A. v. Lindland, 131 Conn. App. 653, 27 A.3d 423 (2011), certification granted, 303 Conn. 906, 31 A.3d 1180 (2011); June Sand Co. v. Devon Corp., 156 Fla. 519, 23 So. 2d 621 (1945); Eastbrook Homes, Inc. v. Treasury Dept., 296 Mich. App. 336, 820 N.W.2d 242 (2012), leave to appeal denied, 493 Mich. 882, 821 N.W.2d 890 (2012); Grimes v. Rush, 355 Mo. 573, 197 S.W.2d 310 (1946); Hart v. Blabey, 287 N.Y. 257, 39 N.E.2d 230 (1942); Hull v. Rolfsrud, 65 N.W.2d 94 (N.D. 1954); Greek Catholic Congregation of Borough of Olyphant v. Plummer, 338 Pa. 373, 12 A.2d 435, 127 A.L.R. 1008 (1940); Newport Yacht Basin Ass'n of Condominium Owners v. Supreme Northwest, Inc., 168 Wash. App. 56, 277 P.3d 18 (Div. 1 2012).

[3] Industrial Partners, Ltd. v. CSX Transp., Inc., 974 F.2d 153 (11th Cir. 1992) (applying Alabama law).

[4] Polhemus v. Cobb, 653 So. 2d 964 (Ala. 1995).

[5] Rosenbaum v. McCaskey, 386 So. 2d 387 (Miss. 1980).

[6] Rosenbaum v. McCaskey, 386 So. 2d 387 (Miss. 1980).

[7] Whitehead v. Bennett, 92 Colo. 549, 22 P.2d 168 (1933); Euclid Ave. Christian Church v. Adams, 26 Ohio App. 306, 5 Ohio L. Abs. 719, 159 N.E. 490 (8th Dist. Cuyahoga County 1926); Sorensen v. Bills, 70 Utah 509, 261 P. 450 (1927).

[8] Rabinowitz v. Keefer, 100 Fla. 1723, 132 So. 297 (1931); Stephenson v. Patton, 86 Kan. 379, 121 P. 498 (1912); Turner v. Edmonston, 210 Mo. 411, 109 S.W. 33 (1908).

[9] City of Manhattan Beach v. Superior Court, 13 Cal. 4th 232, 52 Cal. Rptr. 2d 82, 914 P.2d 160 (1996); Ennis v. Tucker, 78 Kan. 55, 96 P. 140 (1908); Bannard v. Duncan, 79 Neb. 189, 112 N.W. 353 (1907); Baum v. Canter, 104 N.J. Eq. 224, 144 A. 588 (Ct. Err. & App. 1929); Leatherman v. Holt, 212 S.W.2d 1004 (Tex. Civ. App. Eastland 1948).

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XII. Operation and Effect

C. After-Acquired Title

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Deeds 58(2), 83, 116, 121
West's Key Number Digest, Estoppel 22(2)

A.L.R. Library

A.L.R. Index, Deeds and Conveyances
A.L.R. Index, Quitclaim Deeds
West's A.L.R. Digest, Deeds 58(2), 83, 116, 121
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C. After-Acquired Title

§ 278. Generally; estoppel by deed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 116
West's Key Number Digest, Estoppel 22(2)

The "after-acquired title doctrine" addresses a situation in which a person purports to convey to another an interest in property that person does not possess and then, after actually obtaining that interest, seeks to avoid the consequences of the conveyance on the ground that he or she had no interest to convey in the first place.[1] In other words, the "after-acquired title" doctrine is one under which title to land acquired by a grantor who previously attempted to convey title to the same land which he or she did not then own inures automatically to the benefit of the prior grantee.[2] Thus, under the "after-acquired title doctrine," when one conveys land by warranty of title, or in such a manner as to be estopped to dispute the title of the grantee, a title subsequently acquired to that land will pass eo instante to the warrantee, binding both the warrantor and the warrantor's heirs and subsequent purchasers from either.[3] The doctrine of after-acquired property is predicated upon the idea that an uninformed grantee should not be penalized if the grantor did not own the property at the time of the conveyance yet subsequently acquired it; conversely, a grantee who is misled through his or her own want of reasonable care and circumspection may not rely on the doctrine because estoppel is denied where the party claiming it was put on inquiry as to the truth and had available means for ascertaining it.[4]

The rationale of the after-acquired title statute is premised on the concept of estoppel by deed, which is to prevent a grantor without title from later challenging his or her own conveyance of the property.[5] Under the doctrine of estoppel by deed, a grantor is estopped to assert anything in derogation of his or her deed; thus, a specific recital in a deed, to the effect that the grantor has title to or is in possession of the land conveyed, will estop the grantor from asserting the contrary as against the grantee.[6] The doctrine stands for the general proposition that all parties to a deed are bound by the recitals therein, which operate as an estoppel, working on the interest in the land if it be a deed of conveyance and binding both parties and privies, privies in blood, privies in estate, and privies in law.[7]

Footnotes

[1] Layne v. Layne, 74 So. 3d 161 (Fla. 1st DCA 2011).

[2] Carkuff v. Balmer, 2011 ND 60, 795 N.W.2d 303 (N.D. 2011).

[3] Morrow v. Morrow, 2012 WL 4497391 (Miss. Ct. App. 2012), cert. granted, 116 So. 3d 1072 (Miss. 2013); Hardy v. Bennefield, 368 S.W.3d 643 (Tex. App. Tyler 2012).

[4] Morrow v. Morrow, 2012 WL 4497391 (Miss. Ct. App. 2012), cert. granted, 116 So. 3d 1072 (Miss. 2013).

[5] F.D.I.C. v. Taylor, 2011 UT App 416, 267 P.3d 949 (Utah Ct. App. 2011).

[6] Jackson v. Smith, 2010 Ark. App. 681, 380 S.W.3d 443 (2010).

[7] XTO Energy Inc. v. Nikolai, 357 S.W.3d 47 (Tex. App. Fort Worth 2011), review denied, (Mar. 29, 2013).

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XII. Operation and Effect

C. After-Acquired Title

§ 279. Limitations on doctrine of estoppel

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 116

The doctrine of estoppel by deed is never extended beyond what is called for by the plain terms used by the grantor.[1] A grantor generally is estopped to assert an after-acquired title only where such assertion would involve a denial that the conveyance passed the interest or estate which it purported to pass.[2] A deed purporting to convey land to which the grantor has good title, and conveying such title, does not preclude the grantor from reacquiring title subsequently and holding it as against the grantee or persons claiming under the grantee.[3]

Footnotes

1 Wellman v. Tomblin, 140 W. Va. 342, 84 S.E.2d 617 (1954).

2 Rowell v. Rowell, 119 Mont. 201, 174 P.2d 223, 168 A.L.R. 1141 (1946); U.S. Nat. Bank of La Grande v. Miller, 122 Or. 285, 258 P. 205, 58 A.L.R. 339 (1927).

3 McCune v. McCune, 23 Cal. App. 2d 295, 72 P.2d 883 (3d Dist. 1937); Schultz v. Cities Service Oil Co., 149 Kan. 148, 86 P.2d 533 (1939); Federal Land Bank of Columbia v. Johnson, 205 N.C. 180, 170 S.E. 658 (1933).

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XII. Operation and Effect

C. After-Acquired Title

§ 280. Source and nature of after-acquired title

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 116

A.L.R. Library

Joining in instrument as ratification of or estoppel as to prior ineffective instrument affecting real property, 7 A.L.R.2d 294

Generally, if the grantor subsequently acquires a title, which the grantor has purported to convey, from other than the grantee or one claiming under or deriving title from the grantee, it makes no difference, in respect to the application of the after-acquired title rule, how the grantor acquires the belated title,[1] whether through enforcement of a mortgage,[2] enforcement of a vendor's lien,[3] by purchase on foreclosure of a tax lien,[4] or on an execution sale to satisfy a judgment.[5]

Footnotes

1 Garner v. Garner, 117 Miss. 694, 78 So. 623 (1918); Stevens v. Stevens, 10 Wash. App. 493, 519 P.2d 269 (Div. 2 1974).

2 Scott v. Cohen, 115 F.2d 704 (C.C.A. 5th Cir. 1940); Rooney v. Koenig, 80 Minn. 483, 83 N.W. 399 (1900); Born v. Bentley, 1952 OK 260, 207 Okla. 21, 246 P.2d 738 (1952); Waslee v. Rossman, 231 Pa. 219, 80 A. 643 (1911).

3 Pierce v. Camp, 30 S.W.2d 807 (Tex. Civ. App. Austin 1930), writ refused, (Oct. 29, 1930).

4 Lucado v. A. Hirsch & Co., 203 Ark. 792, 158 S.W.2d 697 (1942); Rosborough v. Wrigley, 169 Ga. 298, 150 S.E. 156 (1929).

[5] Houston Oil Co. of Texas v. Village Mills Co., 241 S.W. 122 (Tex. Comm'n App. 1922); Flanary v. Kane, 102 Va. 547, 46 S.E. 681 (1904).

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C. After-Acquired Title

§ 281. Deed of a state or United States

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 116

A.L.R. Library

Estoppel of United States, state, or political subdivision by deed or other instrument, 23 A.L.R.2d 1419

The doctrine of estoppel by deed to assert an after-acquired title does not apply to a state or its assignee, and a state or the United States can never be estopped by its deeds.[1] However, other courts have indicated that the State may be subject to estoppel by deed in the same manner as a private grantor,[2] and the doctrine of estoppel by deed has been invoked to prevent a state which has granted lands to which it had no title from claiming the lands by virtue of a title later acquired.[3]

Footnotes

1 West v. Minneapolis Mining & Smelting Co., 68 Mont. 253, 217 P. 342 (1923).

2 State v. Mobile & O.R. Co., 201 Ala. 271, 78 So. 47 (1918); Daniell v. Sherrill, 48 So. 2d 736, 23 A.L.R.2d 1410 (Fla. 1950); State v. Central Pocahontas Coal Co., 83 W. Va. 230, 98 S.E. 214 (1919).

3 Wolcott v. Des Moines Navigation & R. Co., 72 U.S. 681, 18 L. Ed. 689, 1866 WL 9417 (1866); Martin v. U.S., 270 F.2d 65 (4th Cir. 1959); Daniell v. Sherrill, 48 So. 2d 736, 23 A.L.R.2d 1410 (Fla. 1950).

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§ 282. Effect of statutes

Topic Summary | Correlation Table | References

West's Key Number Digest
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In many jurisdictions, statutes have been enacted bearing on the effect of a deed as passing after-acquired title of the grantor to the grantee or estopping the grantor from asserting such title against the grantee. Some such statutes provide in effect that when one conveys real estate by a deed purporting to convey the same in fee simple, any legal estate which such person afterward acquires will pass to the grantee or the grantee's successor.[1] Others add that the conveyance will be valid as if the legal or equitable title had been in the grantor at the time of the conveyance.[2] Still, others provide that an after-acquired interest will inure to the grantee where the deed purports to convey a greater estate than the grantor was possessed of[3] or where one "sells and conveys by deed" land to which such person does not at the time have title.[4]

Under such statutes, the grantor cannot, of course, assert an after-acquired title or interest if the conveyance comes within the statutory provisions.[5] Under these statutes, a covenant of warranty is not essential to make a conveyance which comes within their terms operate as an estoppel,[6] for they give such conveyances as come within their purview an operation equivalent to the most expressive covenant of warranty.[7]

Many statutes deal expressly with the question of estoppel of the grantor in a quitclaim deed to assert an after-acquired title or interest.[8] Some provide that a quitclaim deed does not extend to after-acquired title unless words are added expressing such intention.[9]

Footnotes

1 Barberi v. Rothchild, 7 Cal. 2d 537, 61 P.2d 760 (1936); Henningsen v. Stromberg, 124 Mont. 185, 221 P.2d 438 (1950); Bernardy v. Colonial & U.S. Mortg. Co., 17 S.D. 637, 98 N.W. 166 (1904).

2 Sheppard v. Zeppa, 199 Ark. 1, 133 S.W.2d 860 (1939); Colorado Trout Fisheries v. Welfenberg, 84 Colo. 592, 273 P. 17 (1928); Schultz v. Cities Service Oil Co., 149 Kan. 148, 86 P.2d 533 (1939); Wilkerson v. Wilkerson, 151 Va. 322, 144 S.E. 497 (1928).

[3] Lee v. Lee, 207 Iowa 882, 223 N.W. 888 (1929); Kirby v. Holland, 210 Neb. 711, 316 N.W.2d 746 (1982).

[4] Brenner v. J. J. Brenner Oyster Co., 48 Wash. 2d 264, 292 P.2d 1052 (1956), opinion adhered to on reh'g, 50 Wash. 2d 869, 314 P.2d 417 (1957).

[5] Myers v. Hobbs, 195 Ark. 1026, 115 S.W.2d 880 (1938); Pure Oil Co. v. Miller-McFarland Drilling Co., 376 Ill. 486, 34 N.E.2d 854, 135 A.L.R. 567 (1941).

[6] Midland Realty Co. of Minnesota v. Halverson, 101 Mont. 49, 52 P.2d 159 (1935); Everly v. Wold, 125 Wash. 467, 217 P. 7 (1923).

[7] Perkins v. Rhodes, 192 Ga. 331, 15 S.E.2d 426, 144 A.L.R. 549 (1941).

[8] Citizens Nat. Bank of Alton v. Glassbrenner, 377 Ill. 270, 36 N.E.2d 364 (1941); Meyers v. American Oil Co., 192 Miss. 180, 5 So. 2d 218 (1941).

[9] Citizens Nat. Bank of Alton v. Glassbrenner, 377 Ill. 270, 36 N.E.2d 364 (1941); Brenner v. J. J. Brenner Oyster Co., 48 Wash. 2d 264, 292 P.2d 1052 (1956), opinion adhered to on reh'g, 50 Wash. 2d 869, 314 P.2d 417 (1957).

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§ 283. Effect of covenant of general warranty of title or ownership

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 116

A deed purporting to convey a fee simple or a lesser definite estate in land and containing covenants of general warranty of title or ownership will operate to estop the grantor from asserting an after-acquired title or interest in the land or the estate which the deed purports to convey as against the grantee and those claiming under the grantee.[1] The rule is the same whether the warranty of title is expressed in the deed or is implied by statute.[2] Under statutes which provide for implied covenants from the use in a conveyance of certain words of grant, such as the words "grant, bargain, sell, or convey," an after-acquired title inures to the benefit of the grantee.[3]

Footnotes

1 State of New Jersey v. State of Delaware, 291 U.S. 361, 54 S. Ct. 407, 78 L. Ed. 847 (1934); Scott v. Cohen, 115 F.2d 704 (C.C.A. 5th Cir. 1940); Merchants' Bank v. People's Sav. & Loan Ass'n, 70 F.2d 169, 93 A.L.R. 226 (C.C.A. 10th Cir. 1934); Alabama Home Mortg. Co., Inc. v. Harris, 582 So. 2d 1080 (Ala. 1991); Weegens v. Karels, 374 Ill. 273, 29 N.E.2d 248 (1940); Hughes v. Fifer, 218 Ind. 198, 31 N.E.2d 634 (1941); Piney Oil & Gas Co. v. Scott, 258 Ky. 51, 79 S.W.2d 394 (1934); Horowitz v. People's Sav. Bank, 307 Mass. 222, 29 N.E.2d 770 (1940); Clark v. Ferguson, 346 Mo. 933, 144 S.W.2d 116 (1940); Millison v. Drake, 37 Ohio App. 559, 8 Ohio L. Abs. 578, 175 N.E. 34 (2d Dist. Franklin County 1930), aff'd, 123 Ohio St. 249, 9 Ohio L. Abs. 446, 174 N.E. 776 (1931); Marx v. Beard, 1956 OK 260, 302 P.2d 132 (Okla. 1956); Hungerpiller v. Keller, 192 S.C. 329, 6 S.E.2d 741 (1940); Clark v. Gauntt, 138 Tex. 558, 161 S.W.2d 270 (Comm'n App. 1942); Johnston v. Terry, 128 W. Va. 94, 36 S.E.2d 489 (1945).

2 New England Mortgage Security Co. v. Fry, 143 Ala. 637, 42 So. 57 (1904); American Sav. Bank & Trust Co. v. Helgesen, 64 Wash. 54, 116 P. 837 (1911), on reh'g, 67 Wash. 572, 122 P. 26 (1912).

3 New England Mortgage Security Co. v. Fry, 143 Ala. 637, 42 So. 57 (1904); Pure Oil Co. v. Miller-McFarland Drilling Co., 376 Ill. 486, 34 N.E.2d 854, 135 A.L.R. 567 (1941).

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§ 284. Effect of covenant of special warranty

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 116

The courts differ as to whether a covenant of special warranty will estop the grantor to assert after-acquired title. According to some courts, a special warranty by the grantor against claims and demands of the grantor and those claiming by, through, or under the grantor does not estop the grantor from asserting title subsequently acquired from a third person.[1] Other courts hold that even though the warranty is a special one, if the conveyance is of land itself and not of an existing or limited interest therein, the warranty will estop the grantor from asserting a subsequently acquired title.[2]

Footnotes

1 Brown v. Harvey Coal Corp., 49 F.2d 434 (E.D. Ky. 1931), aff'd, 61 F.2d 624 (C.C.A. 6th Cir. 1932).

2 American Republics Corp. v. Houston Oil Co. of Tex., 173 F.2d 728 (5th Cir. 1949).

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C. After-Acquired Title

§ 285. Effect of other particular kinds of covenants

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 116, 121

Covenants of title other than the covenant of warranty may pass an after-acquired title to the grantee. For example, a covenant of quiet enjoyment[1] or for further assurance in a deed may operate as an estoppel against an assertion by the grantor of any after-acquired title.[2] A mere covenant of nonclaim, under a deed conveying all the right, title, and interest of the grantor, does not pass an after-acquired title, by the operation of estoppel or otherwise, to the grantee, for such warranty is referable only to the grantor's present right, title, and interest.[3]

Footnotes

1 Tully v. Taylor, 84 N.J. Eq. 459, 94 A. 572 (Ct. Err. & App. 1915); U.S. Nat. Bank of La Grande v. Miller, 122 Or. 285, 258 P. 205, 58 A.L.R. 339 (1927).

2 State of New Jersey v. State of Delaware, 291 U.S. 361, 54 S. Ct. 407, 78 L. Ed. 847 (1934).

3 Hanrick v. Patrick, 119 U.S. 156, 7 S. Ct. 147, 30 L. Ed. 396 (1886); McAdams v. Bailey, 169 Ind. 518, 82 N.E. 1057 (1907); Pellow v. Arctic Min. Co., 164 Mich. 87, 128 N.W. 918 (1910); Coble v. Barringer, 171 N.C. 445, 88 S.E. 518 (1916); Wilson v. Wilson, 118 S.W.2d 403 (Tex. Civ. App. Beaumont 1938); Chesney v. Valley Live Stock Co., 34 Wyo. 378, 244 P. 216, 44 A.L.R. 1255 (1926).

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C. After-Acquired Title

§ 286. Deed without warranties

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 116

If the intention of the parties was to convey the fee or if the deed recited or imported that the grantor had the seisin, such factors are sufficient to entitle the grantee to any title subsequently acquired by the grantor.[1] The grant must contain some reference or representation as to the grantor's title of which the assertion of an after-acquired title would be a repudiation;[2] and in the absence of a warranty of title, the intention, as evinced by the language of the deed and any circumstances explanatory thereof, is controlling.[3]

Footnotes

1 U.S. v. California & O. Land Co., 148 U.S. 31, 13 S. Ct. 458, 37 L. Ed. 354 (1893); American Republics Corp. v. Houston Oil Co. of Tex., 173 F.2d 728 (5th Cir. 1949); Perkins v. Rhodes, 192 Ga. 331, 15 S.E.2d 426, 144 A.L.R. 549 (1941); Ratcliff's Guardian v. Ratcliff, 242 Ky. 419, 46 S.W.2d 504 (1932); Keys v. Keys, 148 Md. 397, 129 A. 504 (1925); U.S. Nat. Bank of La Grande v. Miller, 122 Or. 285, 258 P. 205, 58 A.L.R. 339 (1927).

2 U.S. Nat. Bank of La Grande v. Miller, 122 Or. 285, 258 P. 205, 58 A.L.R. 339 (1927).

3 Bessemer Irrigating Ditch Co. v. Woolley, 32 Colo. 437, 76 P. 1053 (1904); U.S. Nat. Bank of La Grande v. Miller, 122 Or. 285, 258 P. 205, 58 A.L.R. 339 (1927).

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C. After-Acquired Title

§ 287. Quitclaim deeds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 121

Forms

Am. Jur. Legal Forms 2d § 87:29 (Quitclaim deed—Provision—Release of after-acquired title)

A mere quitclaim deed, by which the grantor professes to convey only such interest as existed in him or her at the time of the execution of the instrument,[1] without affirming, either expressly or by implication, the existence of any estate or interest, does not import that the grantor possesses any interest at all[2] and is ineffectual, either by force of an estoppel or otherwise, to pass the grantee any title or right acquired by the grantor subsequently to the execution of such quitclaim deed.[3] A mere quitclaim deed does not so operate that a title acquired by the grantor subsequently thereto will inure to the grantee[4] in the absence of language specifically so providing.[5] In a deed which does not affirm or purport to convey any particular estate, a covenant of warranty will be regarded as referring merely to the grantor's existing interest and will not estop the grantor from asserting an after-acquired title.[6]

A conveyance, although using the terminology of a quitclaim deed, may be regarded as something more than such a deed and operate to estop the grantor from asserting an after-acquired title when it recites further that a definite estate is conveyed thereby[7] or when the circumstances clearly indicate that, as between the parties thereto, a particular interest or estate was intended to be passed by the instrument.[8]

In some jurisdictions, statutes prescribing the effect of a quitclaim deed provide that such a deed does not pass after-acquired title unless words are added expressing such intention.[9] Where this is the case, a habendum clause in a quitclaim deed does not make it operative to convey after-acquired title inasmuch as such a clause neither expresses an intention to do so nor converts it into a warranty deed.[10]

Footnotes

1 § 276.

2 Butler v. Bazemore, 303 F.2d 188 (5th Cir. 1962) (applying Louisiana law).

3 U.S. v. Colorado Anthracite Co., 225 U.S. 219, 32 S. Ct. 617, 56 L. Ed. 1063 (1912); Ellingstad v. State, Dept. of Natural Resources, 979 P.2d 1000 (Alaska 1999); Carter v. Mosier, 84 Kan. 361, 114 P. 226 (1911); Manson v. Peaks, 103 Me. 430, 69 A. 690 (1908); Ernst v. Ernst, 178 Mich. 100, 144 N.W. 513 (1913); Reasor v. Marshall, 359 Mo. 130, 221 S.W.2d 111 (1949); Schuman v. McLain, 1936 OK 593, 177 Okla. 576, 61 P.2d 226 (1936); U.S. Nat. Bank of La Grande v. Miller, 122 Or. 285, 258 P. 205, 58 A.L.R. 339 (1927); Munson v. Goodro, 124 Vt. 282, 204 A.2d 126 (1964).

4 Central Eureka Min. Co. v. East Central Eureka Mining Co., 146 Cal. 147, 79 P. 834 (1905), aff'd, 204 U.S. 266, 27 S. Ct. 258, 51 L. Ed. 476 (1907); Stevens v. Stevens, 10 Wash. App. 493, 519 P.2d 269 (Div. 2 1974).

5 Stevens v. Stevens, 10 Wash. App. 493, 519 P.2d 269 (Div. 2 1974).

6 Reed v. Whitney, 1945 OK 354, 197 Okla. 199, 169 P.2d 187 (1945).

7 Reasor v. Marshall, 359 Mo. 130, 221 S.W.2d 111 (1949).

8 Jamison v. Garrett, 205 F.2d 15 (D.C. Cir. 1953).

9 § 282.

10 Brenner v. J. J. Brenner Oyster Co., 48 Wash. 2d 264, 292 P.2d 1052 (1956), opinion adhered to on reh'g, 50 Wash. 2d 869, 314 P.2d 417 (1957).

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C. After-Acquired Title

§ 288. Where grantee cognizant of, or instrument indicates, actual title; notice of outstanding interest or lien

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 22(2)

The fact that the grantor and grantee are equally cognizant of the grantor's actual title may affect or preclude the operation of particular provisions of the deed as estoppels against asserting after-acquired title.[1] If the true fact of the grantor's title appears upon the face of the instrument, it cannot, in the absence of an express warranty, estop the grantor from asserting an after-acquired title.[2] In order for a deed to operate as an estoppel against an assertion by a grantor of an after-acquired title, it must not appear on the face thereof that, at the time of its execution, the subsequently acquired title was outstanding in third parties and was not in the grantor; in other words, the truth must not appear on the face of the instrument.[3]

Footnotes

1 Ernst v. Keller, 20 Ohio App. 171, 4 Ohio L. Abs. 221, 151 N.E. 790 (1st Dist. Clermont County 1925); Wilson v. Beck, 286 S.W. 315 (Tex. Civ. App. Dallas 1926), writ refused, (Nov. 3, 1926).

2 Midland Realty Co. of Minnesota v. Halverson, 101 Mont. 49, 52 P.2d 159 (1935).

3 Land Clearance for Redevelopment Authority of Kansas City v. Dunn, 416 S.W.2d 948 (Mo. 1967); Midland Realty Co. of Minnesota v. Halverson, 101 Mont. 49, 52 P.2d 159 (1935).

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XII. Operation and Effect

C. After-Acquired Title

§ 289. Invalid deeds or instruments inoperative as deeds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 83

Application of the doctrine of estoppel by deed to assert an after-acquired title presupposes that the instrument relied upon is valid and effective to operate as a conveyance.[1] The doctrine of estoppel by deed does not apply to a conveyance made by one non sui juris or to a conveyance contrary to public policy or statutory prohibition.[2] In some cases, though, an instrument invalid or inoperative as a deed may nevertheless operate as a contract[3] and estop the grantor or maker from setting up an after-acquired title to the premises that were attempted to be conveyed.[4]

Footnotes

1 Rogers v. Snow Bros. Hardware Co., 186 Ark. 183, 52 S.W.2d 969 (1932); Dailey v. Springfield, 144 Ga. 395, 87 S.E. 479 (1915).

2 Starr v. Long Jim, 227 U.S. 613, 33 S. Ct. 358, 57 L. Ed. 670 (1913); Flatt v. Flatt, 189 Ky. 801, 225 S.W. 1067 (1920).

3 § 294.

4 Bliss v. Tidrick, 25 S.D. 533, 127 N.W. 852 (1910).

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§ 290. Deed by personal representative or agent

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 58(2), 83

A grantor who, acting as executor or administrator of a decedent, assumes to convey an estate by deed warranting or importing a representation that he or she has good right to convey the entire estate[1] is estopped from subsequently asserting that the estate conveyed did not pass by the deed.[2] The deed will be held to pass any interest in the land that the grantor may have had in an individual capacity at the time of the deed as heir[3] or otherwise in the grantor's own right.[4]

Some jurisdictions have recognized or applied the rule that one who executes a deed as attorney in fact represents only that he or she is empowered to execute such deed and not that the principal is the owner of the land conveyed and that therefore such person may hold, as against the principal's grantee, any title or interest subsequently acquired in his or her own right.[5]

Footnotes

1 Bliss v. Tidrick, 25 S.D. 533, 127 N.W. 852 (1910); Millican v. McNeill, 102 Tex. 189, 114 S.W. 106 (1908).

2 Bliss v. Tidrick, 25 S.D. 533, 127 N.W. 852 (1910); Millican v. McNeill, 102 Tex. 189, 114 S.W. 106 (1908).

3 Bliss v. Tidrick, 25 S.D. 533, 127 N.W. 852 (1910).

4 Millican v. McNeill, 102 Tex. 189, 114 S.W. 106 (1908).

5 Jacksonville Public Service Corporation v. Calhoun Water Co., 219 Ala. 616, 123 So. 79, 64 A.L.R. 1550 (1929).

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XII. Operation and Effect

C. After-Acquired Title

§ 291. Passage or inurement of after-acquired title

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Deeds 116

Estoppel by deed performs the important function of operating as an actual transfer of an after-acquired estate or interest. The title acquired by the grantor vests in the grantee by operation of law. As many of the cases put it, "the interest when it accrues feeds the estoppel."[1] In some jurisdictions, a legal title subsequently acquired by the grantor in a deed inures and passes to the grantee, without conveyance or decree, by force of statutes so prescribing.[2] In other jurisdictions, the legal title inures to the grantee eo instanti on its acquisition by the grantor as between the grantor and the grantee at least.[3] In any event, the grantee has an equitable interest[4] and is entitled to compel, in equity, a conveyance of the legal title.[5]

Footnotes

1 Columbian Carbon Co. v. Kight, 207 Md. 203, 114 A.2d 28, 51 A.L.R.2d 1232 (1955).

2 McAdams v. Bailey, 169 Ind. 518, 82 N.E. 1057 (1907); Bernardy v. Colonial & U.S. Mortg. Co., 17 S.D. 637, 98 N.W. 166 (1904); American Sav. Bank & Trust Co. v. Helgesen, 64 Wash. 54, 116 P. 837 (1911), on reh'g, 67 Wash. 572, 122 P. 26 (1912).

3 New England Mortgage Security Co. v. Fry, 143 Ala. 637, 42 So. 57 (1904).

4 Keys v. Keys, 148 Md. 397, 129 A. 504 (1925); Jordan v. Chambers, 226 Pa. 573, 75 A. 956 (1910).

5 Jordan v. Chambers, 226 Pa. 573, 75 A. 956 (1910).

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D. Effect of Destruction, Loss, Surrender, or Alteration of Deed

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Deeds 181 to 183

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XII. Operation and Effect

D. Effect of Destruction, Loss, Surrender, or Alteration of Deed

§ 292. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 181, 182

Delivery of a complete deed executed by a grantor who had title to the land invests the grantee with title, and thereafter, the deed is important solely as evidence that the grantee was thereby invested with title.[1] Subject to any statutory provision making the registration of an instrument the effective act for transfer of title, the grantee is not divested of title by any alteration or loss of the deed[2] or by its unauthorized or fraudulent destruction by or at the direction of the grantor[3] or a third person.[4] Legal title does not revest in the grantor by destruction of the deed by the grantee with the intention of so revesting title[5] or by surrender or redelivery of the deed by the grantee to the grantor,[6] and in some jurisdictions, this rule is expressly declared by statute.[7] There is also authority to the effect that the destruction of an unrecorded deed does not result in the revival and reinstatement of a prior unrecorded deed.[8]

If all the parties have consented, a material alteration made while a deed is in escrow is valid.[9]

Footnotes

1 Cain & Bultman, Inc. v. Miss Sam, Inc., 409 So. 2d 114 (Fla. 5th DCA 1982); Miami Holding Corp. v. Matthews, 311 So. 2d 802 (Fla. 3d DCA 1975); Clark v. Creswell, 112 Md. 339, 76 A. 579 (1910).

2 Miami Holding Corp. v. Matthews, 311 So. 2d 802 (Fla. 3d DCA 1975); Chicago Housing Authority v. Cooper, 19 Ill. App. 2d 441, 154 N.E.2d 308 (1st Dist. 1958); Higgs v. Farmer, 234 S.W.2d 1021 (Tex. Civ. App. Fort Worth 1950); Brewer v. Brewer, 199 Va. 753, 102 S.E.2d 303 (1958).
As to the procedure to restore or establish a lost or destroyed instrument, see Am. Jur. 2d, Lost and Destroyed Instruments §§ 7 to 16.

3 Reed v. Keatley, 187 Kan. 273, 356 P.2d 1004 (1960); Lima v. Lima, 30 Mass. App. Ct. 479, 570 N.E.2d 158 (1991); Kramer v. Dorsch, 173 Neb. 869, 115 N.W.2d 457 (1962); Jones v. Mosley, 29 Tenn. App. 559, 198 S.W.2d 652 (1946).

[4] Calbreath v. Borchert, 248 Iowa 491, 81 N.W.2d 433 (1957).
The fact that the grantor's wife, who first protested against the execution of the deed but finally joined therein, destroyed the deed after it had been recorded and returned to the grantor did not destroy the record title vested in the grantee. Wilbourn v. Wilbourn, 204 Miss. 206, 37 So. 2d 775 (1948).

[5] Simmons v. Simco, 192 Ark. 518, 92 S.W.2d 384 (1936); Alger v. Aston, 168 Cal. App. 2d 84, 335 P.2d 133 (4th Dist. 1959); Valley State Bank v. Dean, 97 Colo. 151, 47 P.2d 924 (1935); Wilder v. Conlon, 239 Iowa 187, 30 N.W.2d 764 (1948); Fair v. Curry, 180 Tenn. 650, 177 S.W.2d 827 (1944); Higgs v. Farmer, 234 S.W.2d 1021 (Tex. Civ. App. Fort Worth 1950).

[6] Brown v. Brown, 361 So. 2d 1038 (Ala. 1978); Sides v. McDonald, 228 Ark. 673, 310 S.W.2d 16 (1958); Alger v. Aston, 168 Cal. App. 2d 84, 335 P.2d 133 (4th Dist. 1959); Hoskey v. Hoskey, 7 Mich. App. 122, 151 N.W.2d 227 (1967); Kuntz v. Partridge, 65 N.W.2d 681, 52 A.L.R.2d 1 (N.D. 1954); Houts v. Montes, 1951 OK 58, 204 Okla. 215, 228 P.2d 651 (1951); Fair v. Curry, 180 Tenn. 650, 177 S.W.2d 827 (1944); Higgs v. Farmer, 234 S.W.2d 1021 (Tex. Civ. App. Fort Worth 1950).

[7] Silbernagel v. Silbernagel, 79 N.D. 275, 55 N.W.2d 713 (1952).

[8] West v. First Agr. Bank, 382 Mass. 534, 419 N.E.2d 262 (1981).

[9] Donovan v. Kirchner, 100 Md. App. 409, 641 A.2d 961 (1994).

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Deeds
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XII. Operation and Effect

D. Effect of Destruction, Loss, Surrender, or Alteration of Deed

§ 293. Subsequent deed by grantor to third person; adding or substituting name of grantee

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Deeds 181, 183

The primary effect of a valid deed is to pass the title of the property covered thereby. Hence, a second deed of the same property by the same grantor to another is wholly inoperative although such deed was executed at the request of the original grantee after surrender of his or her own unrecorded deed.[1] At common law, also, transfer of title cannot be effected by the device of adding or substituting the name of another person for that of the grantee who was designated in the deed.[2] Nevertheless, the preferred view is that an equitable title is conferred by estoppel upon a third person where, by mutual consent of the grantee and the grantor, the deed is destroyed, and the grantor conveys to such third person.[3] Some courts have gone further and held that, in such circumstances, the destroyed deed, if unrecorded, may be treated as if title had never been conveyed thereby and that the seisin may be held to be in the grantee named in the substituted deed.[4]

Footnotes

1 Mead v. Pinyard, 154 U.S. 620, 14 S. Ct. 1205, 23 L. Ed. 501 (1876); Emerson-Brantingham Implement Co. v. Cook, 165 Minn. 198, 206 N.W. 170, 43 A.L.R. 41 (1925); Boxley v. Easter, 319 S.W.2d 628 (Mo. 1959); Brugman v. Charlson, 44 N.D. 114, 171 N.W. 882, 4 A.L.R. 400 (1919).

2 Abbott v. Abbott, 189 Ill. 488, 59 N.E. 958 (1901); Gibbs v. Potter, 166 Ind. 471, 77 N.E. 942 (1906); Clark v. Creswell, 112 Md. 339, 76 A. 579 (1910); Carr v. Frye, 225 Mass. 531, 114 N.E. 745 (1917); Bowden v. Bowden, 264 N.C. 296, 141 S.E.2d 621, 30 A.L.R.3d 561 (1965).

3 Tallman v. Huff, 65 Colo. 128, 173 P. 869 (1918); Abbott v. Abbott, 189 Ill. 488, 59 N.E. 958 (1901); Gibbs v. Potter, 166 Ind. 471, 77 N.E. 942 (1906); Cooper v. Hinman, 235 S.W. 564 (Tex. Comm'n App. 1921).

4 Tallman v. Huff, 65 Colo. 128, 173 P. 869 (1918).

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Deeds

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XII. Operation and Effect

E. Contractual Effect of Writing Inoperative as Deed

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Deeds 3, 6, 56(1)

A.L.R. Library

A.L.R. Index, Deeds and Conveyances
A.L.R. Index, Quitclaim Deeds
West's A.L.R. Digest, Deeds 3, 6, 56(1)

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XII. Operation and Effect

E. Contractual Effect of Writing Inoperative as Deed

§ 294. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 3, 6

Trial Strategy

Proof That Grantor Intended Deed As Mortgage, 79 Am. Jur. Proof of Facts 3d 109

In line with the distinction between a void and an inoperative deed,[1] while an instrument which is void because the transaction thereof is prohibited by law is unenforceable even contractually,[2] a deed, although inoperative as a transfer of the grantor's title, may, nevertheless, be enforceable as embodying, or forming a part of, a contract between the parties.[3]

Footnotes

1 § 163.

2 Altemus v. Nichols, 115 Ky. 506, 24 Ky. L. Rptr. 2401, 74 S.W. 221 (1903).

3 Lewis v. Herrera, 208 U.S. 309, 28 S. Ct. 412, 52 L. Ed. 506 (1908); Bayne v. Wiggins, 139 U.S. 210, 11 S. Ct. 521, 35 L. Ed. 144 (1891); Ryan v. U.S., 136 U.S. 68, 10 S. Ct. 913, 34 L. Ed. 447 (1890); Shelinsky v. Foster, 87 Conn. 90, 87 A. 35 (1913); Charlton v. Columbia Real Estate Co., 67 N.J. Eq. 629, 60 A. 192 (Ct. Err. & App. 1905); Robinson v. Daughtry, 171 N.C. 200, 88 S.E. 252 (1916); Moore, Keppel & Co. v. Ward, 71 W. Va. 393, 76 S.E. 807 (1912).

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XII. Operation and Effect

E. Contractual Effect of Writing Inoperative as Deed

§ 295. Undelivered writings

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Deeds 3, 6, 56(1)

Until a voluntary deed is delivered and accepted, it is only a mere proposal to convey which may be withdrawn at any time.[1] Nevertheless, with respect to the force of an undelivered writing in view of the Statute of Frauds, some authorities take the view that it is not essential that the memorandum be delivered provided it was intended to evidence a contract between the parties.[2]

Footnotes

1 Bullitt v. Taylor, 34 Miss. 708, 1858 WL 3052 (1858).

2 Moore, Keppel & Co. v. Ward, 71 W. Va. 393, 76 S.E. 807 (1912).